lation, that the right of appeal given by section 15 must be read with section 13, not with section 23, and that as subsection (1) of section 13 refers only to the powers of the Rent Tribunal as set out in its paragraphs (a) to (f), which do not include the power of the tribunal to give or refuse a certificate under section 23, it is clear that the right of appeal conferred by section 15 can only mean that a decision of the tribunal under paragraphs (a) to (f) of subsection (1) of section 13 may be appealed to the Rent Appeal Board, but not a decision of the tribunal to give or not to give a certificate under section 23. It is said that a decision envisages a hearing and as there is no hearing under section 23 a determination by the tribunal under that section is not a decision. It is said that the operative words in subsection (1) of section 13 are "*the* decision of the tribunal", not *any* decision.

It is said that it is significant that the repealed Control of Rent Ordinance, 1956, when listing the powers of the old Rent Assessment Board in subsection (1) of section 8 of the Ordinance, includes in paragraph (e) the power of the board to give certificates under paragraph (m) of subsection (1) of section 12, so that it was clearly the intention of the legislature then to allow appeals against the decision of that board even though the right of appeal was conferred by a section earlier than section 12, namely by section 11. This, it is said, was in startling contrast to the arrangements of the sections in the 1966 Act which gives the power of the tribunal in two sections far apart from each other, namely in sections 13 and 23, and deals with appeals from the tribunal in section 15. There is no mention in section 13 of the Rent Tribunal's powers under section 23, and as the right of appeal to the board is conferred by the legislature in section 15, clearly the intention (it is argued) is to give a right of appeal against a decision made by the tribunal under section 13, but not under section 23. It is said that the courts must give effect to this plain meaning of the Act and disregard the consequences.

We are of the opinion that there *is* a right of appeal from a decision of the tribunal under section 23 to the Rent Appeal Board. In our view the fact that the section (No. 15) dealing with appeals is placed between section 13 and section 23 does not preclude an appeal against a decision of the tribunal made under section 23. To construe section 15 as contended by Mr. Marjoribanks is to substitute for the words "the decision of the tribunal" in it the words "a decision *under section 13* of the tribunal". In our view, to do so would be contrary to canons of construction. Subsection (1) of section 12 clearly states that Rent Tribunals are established not only for the purpose of Part III of the Act, but for the purpose of the *whole* Act. That is clear from the words "for the purpose of this Act" of the original subsection. We are of the opinion that even after the amendment of that subsection by P.U. (A) 387/70 which has been re-enacted by Act A87/71, Rent Tribunals are established for the purpose of the whole Act. This means that Rent Tribunals are established also for the purpose of exercising powers under section 23. The tribunal's powers enumerated in subsection (1) of section 13 are not exhaustive, for the Act makes quite clear that a tribunal also has powers under section 23.

We are of the opinion that the words "a decision" in section 15 can be construed to mean *any* decision including decisions made by the tribunal under section 23.

With respect to Mr. Marjoribanks' argument, we are of the view that the determination of the tribunal to issue or not to issue a certificate under section 23 *is* a decision, notwithstanding that it may be unnecessary for a tenant to be made party to an application under that section.

We would therefore dismiss this appeal.

On the application of Mr. Devaser we shall hear arguments on costs on a date to be fixed.

Appeal dismissed.

Solicitors: *K. L. Devaser & Co.; R. R. Chelliah Bros.*

PUBLIC PROSECUTOR v. KAM PHANG LIN

[A.Cr.J. (Abdul Hamid J.) November 18, 1972]

[Kuala Lumpur — Selangor Criminal Appeal No. 1067 of 1972]

Arms and Ammunition — Behaving in a disorderly manner — Inadequacy of sentence — Arms Act, 1960, s. 31.

The respondent in the company of two others stopped his car in front of the complainant's house on the night of November 27, 1971 and asked for the complainant's brother. The respondent further told the complainant to ask her brother to come out and at the same time he pulled a revolver out of his trouser pocket, showed it to her and said that he would kill her brother. The respondent was charged under section 31 of the Arms Act with the offence of behaving in a disorderly manner whilst carrying a firearm. The learned magistrate found the respondent guilty and ordered that he be bound over in the sum of $300 for a period of one year. On appeal by the Public Prosecutor,

Held: the behaviour of the respondent constituted an unwarranted abuse of the privilege granted to him to own a firearm and it further constituted a serious breach of the conditions and the law governing possession of firearms. The sentence in this case was therefore manifestly inadequate and should be changed to a fine of $500 or in default six months imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

Wan Majid bin Wan Abdul Hamid (Deputy Public Prosecutor) for the appellant.

K. Sothinathan for the respondent.

Abdul Hamid J. (delivering oral judgment): The Public Prosecutor is appealing against sentence on the ground that the sentence imposed by the magistrate was manifestly inadequate.

The respondent was charged as follows —

"That you on 27.11.71 at about 8.30 p.m. in front of house No. 6, Lorong Awan 7, Ulu Klang New Village, in the District of Kuala Lumpur, in the State of Selangor whilst carrying a firearm, an Automatic WALTER .32 PISTOL No. 241050, did behave in a disorderly manner, to wit, by showing the said pistol to one LEONG YOK MOI and threatening to shoot her brother LEONG YAW KOK, and that you have thereby committed an offence punishable under section 31 of the Arms Act No. 21/60."

The magistrate found the respondent guilty and ordered that he be bound over in the sum of $300 for a period of one year under section 173A Criminal Procedure Code without recording a conviction.

The fact that the respondent behaved in a disorderly manner whilst carrying a firearm has been clearly established. To my mind, that constitutes an unwarranted abuse of the privilege granted to him to own a firearm and it further constitutes a serious breach of the conditions and the law governing possession of firearm. It is needless to say that a person authorised to possess a firearm must at all times comply with the law.

The law provides a penalty of imprisonment not exceeding six months and a fine not exceeding $500 or to both fine and imprisonment.

In his grounds of judgment, the magistrate stated that the respondent was a man of good repute and a successful businessman and was certainly not irresponsible. The respondent's goodness of character was also assumed by the magistrate considering that he was issued with a gun licence. To my mind, the reasoning was illogical. The magistrate had at no time considered the public interest.

The facts reveal that on 27 November 1971 at night, the respondent in the company of two others stopped his car in front of the complainant's house and asked for the complainant's brother. The respondent told the complainant to ask her brother to come out, at the same time the respondent pulled the revolver out of his trouser pocket, showed it to her and said that he would kill her brother.

In the light of the proved facts and circumstances of this case, it is clear that the magistrate had erred in law and in fact in making the order that the respondent be bound over for good behaviour for one year in the sum of $300 under section 173A of the Criminal Procedure Code. The sentence is manifestly inadequate. I allow the appeal.

I therefore set aside the order, record a conviction, and impose a fine of $500 in default six months' imprisonment.

Appeal allowed.

Solicitors: *Sothi & Ang.*

TIO CHEE HING v. TRACTORS MALAYSIA BHD.

[F.C. (Ismail Khan C.J. (Borneo), Gill F.J. & Pawan Ahmad J.) November 20, 1972]

[Kota Kinabalu — Federal Court Civil Appeal No. 73 of 1972]

Practice and Procedure — Application to set aside consent judgment — Fresh action — Whether consent judgment operates as estoppel — Exceptions — Whether no reasonable cause of action — Whether action frivolous or vexatious — Triable issues — R.S.C. 1957, O. 25 r. 4.

In this case the respondents had obtained a consent judgment against the appellant. The appellant applied in the same action to set the judgment aside, but the application was dismissed. Subsequently the appellant brought an action to set aside the consent judgment in the former action. The learned trial judge set aside the writ of summons and all subsequent proceedings in the action on the grounds that the appellant was estopped from bringing the action and that the action was frivolous and vexatious. The appellant appealed to the Federal Court.

Held, allowing the appeal: (1) although as a general rule a consent order would operate as an estoppel, there are clear exceptions to this rule. A consent order may be set aside for the reasons sufficient to set aside an agreement;

(2) the appellant's statement of claim raised triable issues which were *prima facie* sustainable and it could not be said that it disclosed no reasonable cause of action. The action should therefore have been allowed to proceed to trial.

Cases referred to:-

(1) *Ainsworth* v. *Wilding* [1896] 1 Ch. 673.

(2) *Attorney-General* v. *Tomline* (1877-8) 7 Ch. D. 388.

(3) *Hudders Field Banking Co. Ltd.* v. *Henry Lister & Sum Ltd.* [1895] 2 Ch. 273, 283.

(4) *Wilding* v. *Sanderson* [1897] 2 Ch. 534.

(5) *Au Yuan Chee* v. *Lim Leng Thiam & others* (1956) 2 M.C. 260.

(6) *Attorney General of Duchy of Lancaster* v. *London and North Western Rly Co.* [1892] 3 Ch. 274.

(7) *Young* v. *Holloway and another* [1895] P. 87.

(8) *Gugenheim* v. *Lordbroke & Co. Ltd.* [1947] 1 All. E.R. 292.

(9) *Lovell* v. *Williams* (1939) 62 Ll. L.R. 249.

(10) *Dyson* v. *Attorney-General* [1911] 1 K.B. 410, 419.

FEDERAL COURT.

S. S. Lee (*Shelley Yap* with him) for the appellant.

W. K. Loo for the respondents.

Gill F.J.: This is an appeal by the plaintiff from an order of Lee Hun Hoe J. in Civil Suit No. 199 of 1972 in the High Court in Borneo at Kota Kinabalu, setting aside the writ of summons and all subsequent proceedings in the action on the grounds that the plaintiff was estopped from bringing the action and that the action was frivolous and vexatious. Another ground on which the defendants sought to set aside the action was that the writ was not indorsed in accordance with Order 3, rule 3 of the Rules of the Supreme Court, 1957, but this ground was rejected.

The action by the plaintiff was brought to set aside a consent judgment in a former action in the same court, being Civil Suit No. 190 of 1969, in which the present defendants, Tractors Malaysia Berhad (hereinafter referred to as the "respondents"), were the plaintiffs and the present plaintiff, Tio Chee Hing (hereinafter referred to as the "appellant"), was the defendant.

For this judgment to be intelligible, it is necessary to state briefly the facts leading to the former action.